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SPHERION ATLANTIC ENTERPRISES LLC

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public, Plaintiff, v. SPHERION ATLANTIC ENTERPRISES LLC, a Delaware Limited Liability Company; and DOES 1 through 50, inclusive, Defendant.	Case No. 07 CV 2178 W (AJB) **DECLARATION OF JOEL SCULLY IN SUPPORT OF DEFENDANT SPHERION ATLANTIC ENTERPRISES LLC'S MOTION FOR A PROTECTIVE ORDER PURSUANT TO FRCP 26(c)** **Date:** **May 16, 2008** **Time:** **10:00am** **Courtroom:** **A – First Floor** **Judge:** **Hon. Anthony J. Battaglia**

I, Joel Scully, declare:

1. I am a Senior Sales Executive in Austin, Texas for Technisource, a wholly owned subsidiary of Spherion Atlantic Enterprises, LLC ("Spherion"), defendant in this case. I have personal knowledge of the facts set forth in this declaration and if called as a witness, I would and could testify to the truth of these matters.

2. I am employed by the entity formerly known as Spherion Professional Service Group ("PSG"), and now known as Technisource. I have been employed by the company for over 2 years. I currently serve as the Senior Sales Executive for Dell and am an Account Manager on specific projects. I was the Account Manager on Dell Very Small Site Deployment-Navy Marine Corps Intranet ("VSSD-NMCI") project, and I oversaw this account, while Plaintiff Philip Martinet worked on it during his employment with Spherion. This project serviced Spherion's client, Dell Marketing L.P., and Dell's customer Electronic Data Systems

("EDS"). As Account Manager, I worked with Dell personnel on creating an agreement between Dell and Spherion, and once the project was underway I served as liaison between Dell and Spherion.

3. Spherion PSG recruited plaintiff out of its branch office in San Diego. This particular project required that I reach out to Spherion's local San Diego office to recruit employees to staff the contract. This project initially grew out of Dell's need for on-site technicians to service accounts that Dell had with its customers. The project was part of Dell's Managed Services Division. Dell's Managed Services Division provides a variety of managed services to its customers. Plaintiff was recruited as a PC Technician to provide on-site technical assistance at various sites throughout the country. His unique position was part of a larger national deployment utilizing traveling PC Technicians. This particular project required the installation and de-installation of Dell desktops units at various Navy Marine Recruiting Centers. Spherion received this project through its previously developed relationship with Dell.

4. Deployment on the project began on July 9, 2007. At that time Spherion and Dell memorialized their agreement in an addendum to their general service agreement. I am generally familiar with this addendum because I negotiated it on behalf of Spherion and in conjunction with a representative from Dell. Attached hereto as **Exhibit A** is a true and correct copy of the addendum to the general services agreement.

5. Under the addendum, Spherion provided a number of technicians, including plaintiff, to Dell and EDS. The technicians were to perform installation services at Navy Marine Recruiting Stations throughout the U.S. that EDS serviced. Plaintiff was one of those technicians responsible for setting up and troubleshooting the computer hardware and software used at various recruiting stations.

6. Plaintiff's project and job duties were unique. There were only 8 employees who worked as traveling PC technicians supporting this project, and only 4 were based out of California. Plus, each of the PC Technicians staffed on this project were required, as a term of the addendum, to have secret clearance in order to gain access to the military bases where they worked. I am not aware of any other Spherion employees who worked in a similar capacity.

7. While plaintiff was employed as a PC Technician with Spherion, Dell and EDS were responsible for coordinating his activities on the VSSD-NMCI project. As part of his job duties, Plaintiff was required to travel all over the country. Plaintiff worked at Navy Marine Recruiter Stations in various cities under the direction of Dell and EDS and was not under the day-to-day supervision of Spherion or me.

8. After working for approximately less than two months as a PC Technician, servicing Dell computer terminals in Navy and Marine recruiting centers, Plaintiff quit his job with Spherion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 17th 2008, in Austin, Texas.

Joel Scully

Exhibit A

Dell | Services

Statement of Work: VSSD Managed Deployment

Dell Marketing USA L.P.

Spherion Atlantic Enterprises LLC

Dell Marketing USA L.P.
One Dell Way
Round Rock, TX 78682
(800) 274-3355 Fax (800) 333-4329
http://www.dell.com

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1. Scope of Services

This Addendum shall be performed pursuant to the terms and condition of the Dell/Spherion Staff Augmentation Statement of Work dated February 20, 2007 between Spherion Atlantic Enterprises LLC (acting as Dell's staffing "Provider") and Dell Marketing L.P ("Dell". This addendum describes the managed deployment services to be provided by Spherion to Dell's customer Electronic Data Systems EDS ("Customer"). The term of this addendum shall begin on or around July 2, 2007 and end on or around July 2, 2008 or (ii) and when are complete and Customer has indicated acceptance and completion of services at all scheduled sites or as terminated as provided in this addendum.

The scope of Provider's services is to supply eight (8) "dedicated" entry level contractor technicians (traveling team) with secret clearances as follows:

- Camp Lejeune, Jacksonville NC area (1)
- NCR, Washington, DC. (1)
- Tidewater, Norfolk, Va.(1)
- New Orleans, La. (1)
- San, Diego, Ca. (4)

In addition, local deployment technician resources without secret clearances may be requested by the Customer on an As-Needed basis. This addendum sets forth the resource structure agreed between the Provider and Dell in support of the Customer.

2. Responsibilities

Dell and Spherion will each assign a Staffing Manager who will coordinate the activities to be performed under this addendum ("Staffing Manager"). The Staffing Manager for each party will serve as the point-of-contact for all communications and any modification to the scope, requirements, or responsibilities under this addendum.

Dell Responsibilities

Dell will perform the following activities:

- Serve as central point of contact for all staffing issues.
- Conduct meetings to communicate roles, responsibilities, and schedule activities.
- Provide daily timesheets and weekly invoices for approval by the Customer.
- Manage issue escalation process.
- Collection of performance metric data.
- Procurement of skilled technical deployment resources.
- Proper training and orientation of deployment resources.
- Consistent schedule updates in the web based reporting tool.
- Technician contact information for each site scheduled.

Provider's Responsibilities

Provider shall be responsible for the following:

- Pre-screen resources for appropriate background and technical expertise as defined in the Staff Augmentation SOW.
- Perform a face-to-face screening of the resource.
- Ensure that resources take DMS Soft-Skills Certification prior to performing services.
- Ensure timely arrival of assigned resources at the service location.
- Managing day to day HR related issues (including, but not limited to escalations, performance issues, etc.).
- Responding to escalations originating from Dell concerning the provided resources.

- Ensuring timecards are created and reviewed prior to submission to Dell.
- Submission of invoices for the prior week's approved billable hours and expenses.
- Equipment issued by Dell for use on Dell projects. Should this equipment be damaged, lost or stolen, it will be provider's responsibility to replace it. Replacement equipment must be identical to the previously issued model, brand or type. Equipment is for business purposes only.

3. Managed Deployment Services

Spherion will provide technical resources who will perform Services for the Customer sites identified in Appendix C. These Services will be performed Monday through Thursday, 8:00 a.m. to 5:00 p.m. local time with Friday as an optional service day (excluding nationally-observed holidays) based on a forty (40) hour week ("Service Hours"). Services performed outside the Service Hours will be mutually agreed in writing and subject to additional fees.

3.1.1. Technician Readiness

Dell will conduct technician readiness call each Friday in advance in order to gauge the technician preparedness and coordinate activities for the deployment resource.

Schedules

EDS and Dell will mutually agree to a deployment schedule and group of end users that make up each schedule group ("Schedule Group"). The deployment schedule will be distributed by the Customer to end-users identified in each Schedule Group prior to the scheduled installation of their systems. Dell will promptly notify Spherion in order to lock the schedule at least 10 business days prior to the scheduled installation date. Any modifications or cancellations occurring within ONE business day prior to the scheduled installation date will be subject to additional fees. However, Dell will exhaust all contingency plans in an effort to mitigate such fees. If all contingency plans have been exhausted, Dell will initiate a change request process.

Deployment Services

Spherion will complete the deployment activities listed below as part of the Services. All technical manuals and processes will be provided by EDS at least 5 business days prior to deployment.

3.2.1 Staging new systems

- Receiving new systems in staging area.
- Unpacking new systems from shipping boxes and inspecting components for any damage.
- Verifying service tag for each new system against packing slip.
- Escalating any discrepancy or damage regarding the shipment of Dell equipment.
- Organize system components and peripherals (e.g., keyboards, power supplies, mice, and software) for deployment.

4. Pricing

Dedicated Resource Pricing

Dedicated Resources will be identified by Dell/Spherion. Initially, Spherion will assign eight (8) resources and make best effort to supply those resources from desired geographical areas. These resources will be deployed every week. They will travel to the designated locations during VSSD active deployment weeks and to other refresh deployments during VSSD down weeks.

Activity to be Performed	Hourly Price
DEPLOYMENT HOURS	Camp Lejeune, Jacksonville NC ($29) NCR, Washington DC ($29) San Diego, Ca ($29) New Orleans, La. ($30) Tidewater($30)
TRAVEL	Covered by EDS per EDS Travel Agreement
CANCELLATIONS (day of deployment)	$100/resource
CANCELLATIONS (day prior to deployment)	No fee

Notes:

1. All travel costs pertaining to dedicated resources are covered by EDS
   - In the performance of Project Activities and with the prior written approval of the Dell Project Manager, the Provider shall be reimbursed for all ordinary, necessary, reasonable and actual travel expenses incurred by the consultant resource(s).
   - Provider must collect and retain original receipts from Resources for transmittal to Dell as may be required.
   - All approved travel expenses shall be passed through Provider to Dell with no additional costs added.
2. Overtime obligations under the Fair Labor Standards Act (FLSA) and any applicable state and local law will apply
3. A minimum charge of 28 hours (70%) per technician will be applied in cases where the on site deployment labor hours are less than 28.
4. Travel hours cannot be used to accumulate Overtime hours. Approved travel hours will be reimbursed at the regular straight time rate.
5. Security Clearance is required.

As Needed Resource Pricing

As Needed Resources will be identified by EDS on an ongoing basis.

Activity to be Performed	Hourly Price
DEPLOYMENT HOURS	Covered under Staff Augmentation SOW
TRAVEL	Covered by EDS per EDS Travel Agreement
CANCELLATIONS (day of deployment)	$100/resource
CANCELLATIONS (day prior to deployment)	No fee

Notes:

1. All travel costs pertaining to dedicated resources are covered by EDS
   - In the performance of Project Activities and with the prior written approval of the Dell Project Manager, the Provider shall be reimbursed for all ordinary, necessary, reasonable and actual travel expenses incurred by the consultant resource(s).
   - Provider must collect and retain original receipts from Resources for transmittal to Dell as may be required.
   - All approved travel expenses shall be passed through Provider to Dell with no additional costs added.
2. Overtime obligations under the Fair Labor Standards Act (FLSA) and any applicable state and local law will apply
3. A minimum charge of 28 hours (70%) per technician will be applied in cases where the on site deployment labor hours are less than 28.
4. Travel hours cannot be used to accumulate Overtime hours. Approved travel hours will be reimbursed at the regular straight time rate.
5. Security Clearance is required

Pricing excludes any services not specified in this SOW, including but not limited to the following:

- Procurement of hardware, software, or other equipment required for the Services.
- Packaging software applications for installation.
- Providing end user orientation or training.
- Post-installation support.
- Transporting equipment between buildings or between Customer sites, or moving equipment between floors without the use of elevators.
- Shipping,or disposing of legacy systems unless otherwise stated in the SOW.
- Shipping of any hardware, software, or any materials required for the services.
- Removing viruses (Dell will, however, promptly notify the Customer site coordinator upon discovery of any virus).
- Disaster recovery, including but not limited to: re-imaging, reloading software applications or recovering backup data.
- Warranty services or remedial hardware maintenance or software maintenance.
- Warranty services for third party products which are not provided by Dell.

5. Change Management Process

When Dell or Spherion determines that a change is necessary to refine a process, procedure, or specific responsibility identified in this addendum, the party proposing the change will document the request using the change request form provided in appendix B.

The receiving party will review the proposed Change Request and determine whether the change is acceptable or requires modifications. Both parties will review the proposed Change Request and will (i) approve it, (ii) agree to further investigation, or (iii) reject it ("Change Management Process"). When the parties agree to the change, they will sign the Change Request, which upon signing by both parties will constitute authorization to implement the change.

6. General

Dell has the right to terminate this addendum without charge or penalty to Dell if Spherion (1) fails to materially perform any of the services identified in this addendum; (2) fails to meet any of the SLAs defined in the SOW, provided such failure is not caused in whole or in part either by actions, or failures to act, on the part of EDS or the government; and (3) has made any incorrect assumptions that lead to missed SLAs and such incorrect assumptions have not been resolved in accordance with paragraph 3 above.

IN WITNESS WHEREOF, Dell and Spherion have caused this addendum to be signed and delivered by their duly authorized representatives as of the date of last signature below (the "Effective Date").

Spherion Atlantic Enterprises LLC	**Dell Marketing.**
By:______________________	By:______________________
Printed Name: ______________	Printed Name: ______________
Title:_____________________	Title:_____________________
Date:_____________________	Date:_____________________

Dell | Services

Appendix B – Change Request Form

CR# 0000	Between:	Dell-Customer	Dell-Vendor

Client Name	*(there must be a name in this field)*
Change Manager	*(there must be a name in this field)*

CONTACT INFORMATION							
Prepared by							
Change Owner	*(there must be a name in this field)*						
Client/Vendor Contact							
DESCRIPTION OF EXISTING STATE ⇩							
Details: *(Select from SOW, Clearly state process to be changed, Cite rationale for original design)*							
SUGGESTED CHANGE ⇩	IMPACT → Cost		Schedule		Quality or Quantity		
Details: *(Include Rationale, Scope of Change, Specific requirements to be implemented Identify personnel changes)*							
IMPACT ⇩							
Details: *(Include: Itemized Costs, Specific New schedule,)*							
Total Cost of this Change	$	Paid By → (keep all that apply)	VENDOR/SUPPLIER				
SELECT ONE →	This change is:	Accepted	date	Rejected	date		
***REVISIONS TO SUGGESTED CHANGE OR REASON FOR REJECTION AND NEXT STEPS**							
(include date and explanation-submit to Change Manager for re-consideration---Significant changes must be approved by either the Change Review Board or the Solution Design Center)							

DELL		CUSTOMER/VENDOR	
Signature		Signature	
Name		Name	
Date		Date	

Appendix C – Customer Sites and Schedule

The Services will be provided for the following Customer locations during the term of this SOW. Additional Customer locations may be included as mutually agreed using the Change Management process. The Customer Program Manager will ensure that a Site Coordinator is assigned for each location prior to delivery of Services. Include the VSSD schedule file here for reference

C:\Documents and Settings\david_valen